83-1538

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No. ____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1983

RICHARD LAFFERTY
Petitioner,

v.

ALYESKA PIPELINE SERVICE COMPANY, FLUOR ALASKA, INC., and NANA SECURITIES, or JOHN DOE 1,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
to
The Supreme Court for the State of Alaska

Richard Lafferty
P.O. Box 101585
Anchorage, Ak. 99510

QUESTIONS

This whole case revolves around the request for a trial by jury and the denial thereof.

1. When the Court System fails, who is responsible, the Judges, or the laymen?

2. Is due process served when a request for a trial by jury lies in the court system six years, with the merits never being looked at; initially not looked at by the Superior Court because opposing counsel told the Judge that the case was res judicata, foreclosing a close look at the merits, and making possible the granting of immediate summary judgment denying me a trial, and subsequently not looked at by the Supreme Court by choice, the Supreme Court concerning itself only

with procedure, basing its decision against me on the fact that I had filed late by five months in requesting a reconsideration of that summary judgment, and finding it irrelevant that opposing counsel had deliberately lied in telling the Judge the case was res judicata when he knew that it was not; the Supreme Court finding that lie to be only simple fraud instead of Fraud Upon the Court and therefore foreclosed by the one year time limit required when filing on simple fraud; the Court ignoring the acts of God and circumstances that were the cause of that late filing, and affirming the Superior Court in its summary judgment denying me a trial and in its assessment on me of attorney's fees of $3,500 owed to the opposition for that wrongfully gained summary judgment which I was required to pay and did pay; and the

Supreme Court still ignoring the merits when throughout this entire six year period, in all of my pleadings, I fervently requested the Court to look at the merits, and they nevertheless, did not look at them: Is this due process or is it a modern form of legal torture?

3. Is the denial of the protection of the Seventh Amendment based on a small, unwillful error in court procedure an excessively harsh and cruel punishment and therefore in violation of the Eighth Amendment?

4. Would not a prison term of three months or a money fine gauged to the affluence of the offender be a more fit punishment for a small, unwillful error in court procedure than the total denial of the right to a trial by jury, when

that right is the only lawful recourse for a grievous constitutional trespass willfully perpetrated by a large corporation on a weak citizen?

5. Should a request for a trial by jury be lumped in with all other legal proceedings as merely commonplace, such as divorce, default, and bankruptcy, or should it be treated as a unique request outside the legal system, since it is request to get in it, and as such, should not come under the same inflexible rules of procedure used, once one is in the legal system?

6. This sixth question is the most important and it is the question that gave rise to this suit.

Alyeska Pipeline Service Company searched me against my will, grievously

violating my privacy and deliberately acted to humiliate me and degrade me by proving to me and to the over 200 people on site that I had no constitutional rights which they were bound to respect and that I was nothing. They now assert to the Court in open defiance of the Constitution that they are not bound by constitutional standards because they are an industrial establishment and that therefore they do not have to respect the constitutional rights of U.S. citizens. This assertion gives rise to three questions:

Are industrial establishments bound by constitutional standards, or are they not?

If they are not, what standards are they bound by?

If their legal authority does not flow from the Constitution, from what does it flow?

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JURISDICTION

This is a Petition for a Writ of Certiorari.

There is no published opinion below.

STATUE CONFERING JURISDICTION

28 U.S.C.A. 1651 Writs.

TABLE OF CASES

West Key System, mandamus 46. Mandamus may be granted to require jury trial where it has been improperly denied.

Cases in support of above proposition:

BEACON THEATRES, INC. V. WESTOVER
79 S.Ct. 948
DAIRY QUEEN, INC. V. WOOD
82 S.Ct. 894
IN RE ZWEIBON 565 F.2d 742

STATUES AND CONSTITUTIONAL PROVISIONS INVOLVED

This case is based on violations of the Fourth, Seventh, and Eighth Amendments to the U.S. Constitution.

Also under the Constitution of the State of Alaska the following provisions are involved:

Article 1, Sec. 7 Due Process
Article 1, Sec. 12 Excessive Punishment
Article 1, Sec. 14 Searches and Seizures
Article 1, Sec. 16 Civil; Trial by Jury

Under the Rules of Civil Procedure for the State of Alaska the following rules are involved:

Rule 38 Jury Trial.
Rule 39 (a) Trial shall be by jury when demanded.

Rule 56 Summary Judgment.

Rule 60 (b) Relief from Judgment.

PROCEDURAL SYNOPSIS

Dec.10,83, U.S. Supreme Court grants 30 day extension running till Jan.16,84.

Dec.5,83, requested U.S. Supreme Court to grant extension of 30 days.

Dec.5,83, filed Notice of Appeal to U.S. Supreme Court.

Nov.29,83, Alaska Supreme Court marks my case closed and on this same date denies a motion to accept untimely appeal.

Sept.15,83, Ak.S.Ct. denies Petition for Rehearing.

Sept.8,83, Ak.S.Ct. grants motion to file untimely Petition for Rehearing.

June 15,83, Ak.S.Ct. affirms Superior

Court in its denial of setting aside its summary judgment.

July 7,82, Superior Court denies request to set aside its summary judgment.

March 16,78, Superior Court issues original summary judgment denying me a trial by jury.

May 6,77, suit is filed on Alyeska on the basis of an illegal search and other acts incident thereto.

BAD DECISIONS AND REQUEST TO CORRECT THEM

I request the Supreme Court to review the decision of the Alaska Supreme Court of June 15, 1983 and also the original summary judgment decision of Mar.16,1978.

I also request the Court to look at the merits of my suit to determine whether I deserve a trial by jury.

I also request the Court to determine whether Alyeska is bound by the Constitution or not.

I also wish the Court to determine whether it is permissable for the Alaska Supreme Court to use the denial of the inviolate right to a trial by jury as a punishment to enforce their own rules of court procedure.

The remedy in this case may be mandamus and if the Court agrees, with leave of the Court, I'll request mandamus.

CHARGES AGAINST THE ALASKA SUPREME COURT

I have three charges to make against the Ak.S.Ct: They didn't look at the merits, they ignored two acts of God, and they deemed an egregious lie not to be egregious.

My first complaint and main complaint against the Ak.S.Ct. is they have denied me a trial by jury without ever looking at the merits of my case.[1]

I closed my oral argument to the Ak. S.Ct. with the prayer that they overturn Judge Carlson's summary judgment and grant me a trial by jury. Though I didn't use the specific word mandamus, the substance of that request is clearly mandamus, and required looking at the merits, which I had so painstakingly presented to them.

1. Memorandum Opinion and Judgment, June 15, 1983, page 34.

I brought a serious question to the Court. I brought a question of national importance. I brought a question imminently important to the people of Alaska. Alyeska claims the right to conduct searches on anyone they choose who is in close proximity to them without regard to any constitutional right that that person might have because Alyeska claims to be not bound by the Constitution.

I have been before the Alaska Court System six years with the most important legal question on personal rights to come out of the Pipeline Era and all I learn is that I made an error in procedure.

My second complaint is that the Ak.S. Ct. ignores two acts of God which directly bear on the issue of timeliness

in this case.

The reason the Ak.S.Ct. denies me a trial is that I filed late by five months on a reconsideration of the original summary judgment which denied me a trial.

The Ak.S.Ct. ignores the devastating nervous breakdown of my attorney, equivalent to death. The Court ignores the fact that his death comes in the exact period in which he was supposed to have filed for a reconsideration and a dead man cannot file papers, ignores that I was without knowledge of his death because I was in Utah and a dead man does not notify his clients that he is dead, ignores that I was in Utah not by choice but of necessity for the sole and only purpose of earning money to pay huge medical bills as a result of a devastating airplane accident to myself, ignores that as soon as I learned of his death

I immediately hired another attorney who immediately filed for reconsideration, and ignores that I was completely diligent within the framework of known knowledge and physical possibility. The Court ignores the extensive psychiatric care received by my attorney, ignores that the Bar Association pre-empted his cases, ignores that he has not practiced law since the time of his breakdown five years ago.

The nervous breakdown of my attorney is a fact of Court life. He was raised here, went to school here, was young and upcoming, was a trial attorney frequently in the court room, and had his law office directly across the street from the Court House. Not only would it be impossible for the judges to not know of his nervous breakdown through the grapevine, it is their job to know, as

they are superintendents of the Courts and the Bar.

The other act of God which the Court ignores is the devastating airplane accident to myself in Kenai, Alaska. That accident received national coverage by my rescuer, Mike Hancock, receiving the Carnegie Prize for Heroism and also the Alaska Prize for Bravery, awarded by Governor Hammond. This accident, and the resulting injuries, and the resulting debt, twisted and bent my life for three years. It is the cause of me not being here in Alaska at the time the summary judgment was rendered, is the cause of me not being here to work with and consult with my attorney, is the cause of me being in Utah in order to earn money to pay off the huge medical bills, is the cause of me not knowing of the nervous breakdown of my attorney because I

was in Utah, is the cause of me being in debt without money to take flights back and forth to Alaska, is the cause of me being in a remote place in the eastern desert of Utah, working on the Castle Dale powerhouse, doing what any honorable man would do when faced with bills.

The Ak.S.Ct. has ignored any bearing this accident might have on timeliness. They ignore any bearing the nervous breakdown of my attorney might have on timeliness. With the aid of horse blinders the Court sees only that the filing for the reconsideration was late and on that basis justifies denying me a trial.

My third complaint is that the Ak.S. Ct. deemed the lie of Alyeska by which they succeeded in denying me a trial to be merely simple fraud rather than Fraud Upon the Court.

The Ak.S.Ct. gives the term Fraud Upon the Court an esoteric meaning over and above its literal meaning, for the fraud practiced in this case was upon the Court, not upon me.

But even granting the esoteric meaning that the lie told must be egregious, the lie told by Alyeska meets that test.

An egregious lie may be fairly described as an untruth told with the idea of hurting someone or receiving a benefit. It is distinguishable from harmless lies or white lies, e.g., when one says he is thirty nine when really he is forty five. Egregious lies may be called simply the worst kind of lies.

David Bundy, the attorney for Alyeska, deliberately, willfully, and knowingly told Judge Carlson that the case was res judicata due to a pre-existing arbitration between Alyeska and me. He did this

specifically to deny me a trial and he achieved his purpose. He made this the central point of his defense, knowing the whole while that it was not true. Nothing else he said was dispositive of the case except res judicata and he emphasized it many times.

I have proven conclusively that he did know that the case was not res judicata, but the Ak.S.Ct. excuses him in his lie, saying it is merely fraud instead of Fraud Upon the Court.

The thing that makes this lie egregious is that it has never been retracted; it stands totally viable, day after day, doing its dirty work. This lie has put me through misery for six years, it has thwarted due process, it has denied me a substantive right, it has denied me lawful recourse for a grievous constitutional trespass by Alyeska,

it has cost me thousands of dollars, the least of which is the thirty five hundred dollars in costs I was ordered to pay this same lawyer who told this lie.

And worse than all of this is the fact that Alyeska has defended this lie, time after time, and still demands the benefit that they have received from this lie as a matter of right, and point to me with the accusing finger, as being the error maker, because I did not bring this lie to the attention of the Court sooner.

The logic seems to be that little lies should be brought to the attention of the court quicker, because, being little, they should be easier to find, and if one takes too long in finding them, he is in error, by being too late, and being late, is a far worse error than the original

lie, and deserves punishment by the denial of a trial by jury. Little lies are the most lethal lies of the opposition because they are the only kind of lies protected by the court.

Big lies, on the other hand, being big, must be difficult, and therefore very hard to find. Therefore there is no time limit whatsovever on bringing big lies to the attention of the court.

The Court apparently judges lies by size, not by what they do. Because the lie of David Bundy was not over one sentence long, even though repeated by him many times, it is a little lie. But a well placed bullet can kill a moose. A rapier blow can kill a man. And a well told lie, no matter how little in length, can be Fraud Upon the Court. A lie should be judged not by its length but by what it does. It should be judged by its

intended purpose and whether it achieves that purpose. And the Ak.S.Ct. has not judged this lie by this standard, for if they had, they would have been forced to the conclusion that it is egregious.

APPEAL TO CONSCIENCE

There has been no remedy in this case and somebody is responsible. The real question is, who is it?

The Alaska Court System says that it is me. But I say that it is them.

I do not think this question can be decided by the Alaska Court System because they have self-interest in finding themselves innocent.

And I do not think this question can be decided purely on law; it must be decided by the conscience of reasonable men.

Here is how I see this case and it is what grieves me so:

I am a layman wishing to bring suit for a trespass. I hire a lawyer. That lawyer is an officer of the court, under the ultimate supervision of judges.

I board the legal system like boarding a commercial airliner. I place my trust in the lawyer as I would place my trust in the pilot.

But the co-pilot, the opposing counsel, wishes to kill me, and once in the air, he dives the plane to the ground and bails out. My own lawyer's nerves are blown and he is incapable of saving me. I die in the ensuing crash, and so does my lawyer.

Now who is responsible for my death? Is it the co-pilot who dove the plane to the ground? Is it my lawyer who was incapable of saving me? Was it me for boarding the plane? Or was it the supervision of the airline for dereliction in the supervision of their pilots?

The supervision disclaims responsibility saying I should have known better than to have boarded the plane. The co-

pilot says that because I was an enemy he had a right to kill me by diving the plane to the ground. My pilot is incapable of defending himself, due to his nervous breakdown. Therefore, there is no one left to blame but me.

This is who the Alaska Court System blames for there being no remedy in this case. They blame me. They do not blame themselves, the ultimate supervision. They do not blame the co-pilot who dove the plane to the ground. They do not blame the pilot who was incapable of preventing the crash. They blame me for boarding the plane and picking a pilot who was going to have a nervous breakdown.

I am not a card reader or a seer or a psychologist. There is no way on earth for me to know that a lawyer is going to have a nervous breakdown. I would have

had next to zero chance of knowing this, even if I had been on the scene. But I was not on the scene. I was 2,700 miles away in Utah.

The Judges are the ones who should have known that my lawyer was going to have a nervous breakdown, if anyone should have known it, for they are the ultimate supervision; it is their responsibility to know it.

What makes judges different than other supervision? How can judges blame passengers in their system for failures in their system?

The judges write the rules for the system. They govern the system. They supervise the system. They enjoy the glory of the system. But they disclaim responsibility when a passenger is killed by the system.

I brought the failure of these pilots to the attention of the Judges. The Judges have defended the co-pilot who dove the plane to ground saying he was working for the opposition and therefore it was his right to kill me and that it is my fault because I did not hire a pilot capable of saving the plane.

Throughout our society this discalming of responsibility by supervision is no where to be found except in the Court System. Manufactures are responsible for their products. Contractors are responsible for their structures. Hospitals are responsible for their services. Airlines are responsible for their passengers. But the Court System is not responsible for those abused by their system.

What more as a layman could I have done than I did? I hired a lawyer. I

paid the bills. When the first lawyer died I hired another lawyer. I trusted the system and obeyed its rules. I always acted diligently within the frameeork of known knowledge and physical possibility. I was removed from the scene for the sole and only purpose of paying medical bills to Providence Hospital, earned by them saving my life, and now I am being penalized for being an honorable man in struggling to pay them and for not being a card reader and a seer so that I could foresee the nervous breakdown of my lawyer.

The responsibility for the lack of remedy in this case lies clearly with the Court System who has refused to take any corrective action for the failings of their system, disclaiming responsibility for the failure of their system and blaming me, the one person in this

scenario who is totally innocent.

I did not dive the plane to the ground. The Court defends the man who did. I did not have a nervous breakdown. But the Court blames me for picking one who did. The Court does not blame itself for the performance of its officers of the court; it blames the innocent passenger on the plane.

MERITS OF THE SUIT

Alyeska conducted a forceable search of my underwear, my tooth brush kit, my letter box, my suitcase, my duffel bag. I vehemently resisted this search saying that such a search would be violation of my constitutional rights. Alyeska overpowered my resistance by resorting to the Police Power of the State by calling in a State Trooper whom they ordered to threaten me with arrest for trespassing if I did not depart their premises, at the same time physically restraining me from departing their premises until I submitted to their search.

FACTS IN THE SUIT

Alyeska bases their right to search on the assertion that they have constitutional immunity.[1] They have cited no statue or constitutional provision granting this asserted constitutional immunity.

Alyeska admits that they searched me,[2] that I objected on constitutional grounds before I was searched,[3] that a State Trooper was called in by them to threaten me with arrest,[4] and that I was not an employee.[5]

Alyeska has produced no consent waiver, no warrant, shown no probable cause, and admits that I was not suspected of stealing anything.

1. Oral Hearing of 3-16-78 page 4.
2,3,4,&5. Oral Hearing of 3-16-78 page 2.
All of these facts are well documented and admitted in the various pleadings.

HISTORY OF THE SUIT

My attorney brought suit against Alyeska on May 6,77, requesting a jury trial. Alyeska moved for summary judgment denying me a trial and were granted this summary judgment.

I was out of State at the time this summary judgment was rendered and I did not learn it had been rendered until five months after it had been rendered when I returned to Alaska to learn the progress of my case. At that time I contracted with my lawyer to file for a reconsideration of this summary judgment, charging Alyeska with a willful lie to the Judge, placed the case in his hands, and then returned to Utah where I was working at that time.

During my absence, which was exactly one year, my attorney became incapacitated

due to a devastating nervous breakdown and failed to file. Not until my return, a year later, did I learn of his breakdown and of his failure to file. Immediately upon learning this, I hired another attorney who immediately filed for a reconsideration and that filing was five months late.

I also wanted this second attorney to charge Alyeska with a willful lie to the Judge, but she refused to do this.

And I did not have time to bargain or to hunt another attorney because I had to return to Utah immediately or else lose my job.

I later fired this second attorney due to a disagreement with her and took over the case myself pro se, changing the charge to Fraud Upon the Court, as I had wanted her to do.

She had charged incompetence of my

previous attorney and this had a pejorative connotation, and conflicts with the fact that a man is not responsible for his own death, either mental or physical. His death had nothing to do with the fact that Alyeska's attorney had deliberately told the Judge the case was res judicata when he knew it was not.

In the capacity of pro se, I did prove conclusively that Alyeska willfully and knowingly lied to the Court for the specific purpose of denying me a trial.

REASONS FOR GRANTING THE WRIT

Alyeska claims the right to conduct searches on any private citizen they choose who is in close proximity to them if it is to their interest without regard to the rights or interests of the person being searched. And they do this in open defiance of the Constitution.

The searches conducted by Alyeska are not only invasions of personal privacy, they use these searches perversely, to bully people, to cow them, to humiliate them, to break their spirit, to show them who's boss, to prove to them who's bigger than who, and to demonstrate to them that they have no personal rights or constitutional rights in the presence of Alyeska. These searches are conducted under the authority of foremans and superintendents, uneducated in the rights

of due process, knowing only license and power, and who are unbridled in their arrogance and contempt for the Constitution, knowing that they are backed by Alyeska and their battery of lawyers.

The superintendent who searched me held me three days against my will in a remote place here in Alaska before finally forcing me to submit to his search by calling in a State Trooper and ordering him to threaten me with arrest.

These searches are universally detested by the people here who are subject to them and have never been successfully challenged at law. They have the appearance of being sanctioned by the Court. This appearance is reenforced by the Court System refusing to grant a trial by jury when a suit is brought against one of these searches.

CONCLUSION

I have been denied the inviolate right of a trial by jury and I have been denied this right by the Court as a punishment to enforce its own rules of court procedure.

The Alaska Rules of Court say that trial by jury shall be preserved to the parties inviolate. (see rule 38, page 59)

It is equally true that our founding fathers did not intend that the denial of the right to a trial by jury be used as a punishment to enforce court procedure.

There are more civilized and humane ways of enforcing rules of court procedure than the suspending of constitutional rights.

ATTORNEYS INVOLVED

Alyeska was originally represented by Ely,Guess & Rudd, 510 L Street, Anchorage Alaska 99501. (25 lawyers in firm.)

Alyeska is now represented by Groh, Eggers & Price, 550 West Seventh Avenue, suite 1250, Anchorage, Ak. 99501. (11 lawyers in firm.) Mr. Kenneth P. Eggers and Mrs. Sally Kucko are the case attorneys.

Originally I was represented by Mr. Joseph W. Murray, 310 K Street, suite 506, Anchorage, Ak. 99501. Mr. Murray was a sole practitioner. He has been on inactive status since 1979.

Subsequently I was represented by Abbott, Lynch, and Farney, 601 West 5th Ave., 6th floor, Anchorage, Ak. 99501. (9 lawyers in firm.) Mary Louise Molenda was the case attorney.

Since April 4,1981, I have represented myself, pro se.

JUDGES INVOLVED

The Judge of the Superior Court was the Hon. Victor D. Carlson, Trial Courts, State of Alaska, 303 K Street, Anchorage, Alaska 99501.

The Judges of the Supreme Court were the Hon. Edmond W. Burke, Chief Justice, the Hon. Justice Jay A. Rabinowitz, the Hon. Justice Warren W. Matthews, Jr., the Hon. Justice Allen T. Compton, and the Hon. Justice James A. Hanson, Pro Tem., State of Alaska Appellate Courts, 303 K Street, Anchorage, Alaska 99501.

CERTIFICATION

I, Richard Lafferty, certify that I have given an accurate accounting of the substance of this case.

Dated this 3 day of January, 1984, at Anchorage, Alaska.

Richard Lafferty

Richard Lafferty
in propria persona
P.O. Box 101585
Anchorage, Ak. 99510

Seal

Subscribed and sworn to before me, Zoe Ann Dahlegel, at Anchorage, Ak., this 3 day of January, 1984.

THE SUPREME COURT OF THE STATE OF ALASKA

RICHARD LAFFERTY,

Appellant,

v

ALYESKA PIPELINE SERVICE COMPANY, FLUOR ALASKA, INC., and NANA SECURITIES, or JOHN DOE 1,

Appellee.

File No. 7055

MEMORANDUM OPINION AND JUDGMENT*

(No. 130 - June 15, 1983)

Appeal from the Superior Court of the State of Alaska, Third Judical District, Anchorage, Victor D. Carlson, Judge.

Appearances: Richard Lafferty, Pro Se, Anchorage. Kenneth P. Eggers, Groh, Eggers & Price, Anchorage, for Appellees.

Before: Burke, Chief Justice, Rabinowitz, Matthews, and Compton, Justices, and Hanson, Judge.**

* Entered pursuant to Appellate Rule 214.

** Hanson, Superior Court Judge, sitting by assignment made pursuant to article IV, section 16, of the Constitution of Alaska.

44 judgment

This is an appeal from the denial of a Civil Rule 60(b) motion to set aside a summary judgment. We affirm.

Richard Lafferty filed his complaint in this action on May 6, 1977. The complaint sought damages for invasion of privacy, trespass to chattels, false imprisonment, and defamation.[1] Alyeska moved for summary judgment on all four causes of action. Following oral argument, the motion for summary judgment was granted on April 12, 1978. Lafferty did not appeal the judgment.

1. Lafferty was required by his former employer to submit to a search of his belongings when he was laid off from his job on the Trans-Alaska Pipeline System. The lawsuit stemmed from events surrounding the search. We express no opinion on the merits of Lafferty's claims.

On September 7, 1979, Lafferty, represented by different counsel, filed a motion to set aside the summary judgment. This motion was supported by Lafferty's affidavit stating that at the time the motion for summary judgment was granted he was not in Alaska. He also stated:

> 3. I was not informed of that Summary Judgment until nearly (5) months later, when at the end of August of 1978, I returned to the state and asked my former counsel about the status of the case.
>
> 9. I believed that my former attorney would diligently pursue any remedy which I may have had at that time. I was not aware of the legal effect of judgment and the 30-day time requirement for an appeal.

10. I then left Alaska to obtain work in Utah, where I have spent the last year, until returning to the state in August, 1979.

11. Because I could not contact my former attorney, I went to the Clerk's office to review the court file, where I discovered for the first time than an award for attorney's fees was included in the Summary Judgment and had been entered against me. It was only then that I realized the case had been closed. I then hired present counsel.

In his memorandum in support of the motion to set aside the judgment, Lafferty argued that he had assumed at the time he learned of the entry of the judgment in August or September of 1978 that his former counsel would pursue

whatever remedy existed. Lafferty asserted that, upon learning in 1979 that no further action had been taken, he diligently pursued the matter. Citing Civil Rule 60(b)(6) as authority, Lafferty argued that the judgment should be set aside because "the unprepared and incompetent representation of the Plaintiff (at the summary judgment hearing) resulted in a miscarriage of justice by depriving the Plaintiff of his day in court." Lafferty further contended that his former counsel had abdicated his responsibility to this client following the entry of judgment.

The motion was opposed on the merits and on the ground that it was untimely. In reply, Lafferty, then appearing pro se, argued that the attorney for Alyeska had lied to the court in the course of the summary judgment proceedings, thus

perpetrating a fraud upon the court. Alyeska responded, again arguing that the motion was untimely and without merit.

The superior court denied the motion to vacate the summary judgment. This appeal followed.

DISCUSSION

A motion for relief under Civil Rule 60(b) (1)-(3) must be brought within one year or it is untimely; courts do not have the power to entertain motions under these grounds beyond that time. O'Link v. O'Link, 632 P.2d 225, 229-31 (Alaska 1981).

Alyeska asserts that Lafferty's contention concerning his counsel's failure to adequately represent him in the summary judgment proceedings falls within the ambit of Civil Rule 60(b)(1) and therefore may not now be heard. We

agree. See Farrell v. Dome Laboratories, 650 P.2d 380,384 (Alaska 1982).[2] We also hold that the alleged failure of Lafferty's attorney to inform him of the judgment, of the time limits for appeal, or of the possibility or time limits for relief

2. In Farrell, we reversed the superior court's granting of relief under Civil Rule 60(b) for an alleged error by counsel because we held that the motion was governed by Rule 60(b)(1) and had been untimely filed more than one year after the judgment had been entered. 650 P.2d at 384. We noted that relief under Rule 60(b)(6), which does not require the motion to be brought within one year of when the judgment was entered, "is not available unless the other clauses are inapplicable." Id. at 385.

Professor Moore indicates that there may be some basis for treating particularly egregious misconduct by an attorney as within the ambit of Civil Rule 60(b)(6), rather than Rule 60(b)(1). 7 Moore's Federal Practice par. 60.27(2), at 365-69 (1982). Assuming, without deciding, that this is so, we nonetheless conclude that the conduct of Lafferty's counsel was not so egregious as to remove it from Civil Rule 60(b)(1).

from judgment is similarly within the ambit of Civil Rule 60(b)(1) and therefore cannot now be considered.

Motions under Civil Rule 60(b)(3) are, like 60(b)(1) motions, barred after one year. O'Link v. O'Link, 632 P.2d at 229. Lafferty's allegation that Alyeska's attorney lied to the court in the summary judgment proceedings falls within this category.[3] It, therefore, is also barred because of the lapse of time. Neglect in failing to file a timely notice of appeal from the original judg-

3. The purported "lie" was merely an argumentative assertion of a legal position. The relevant facts were in the record before the court at the time of the summary judgment motion and Lafferty's counsel was present to point out any "lie" or faulty logic in Alyeska's presentation. There was clearly no "egregious fraud upon the court" justifying relief under other than Civil Rule 60(b)(3). See Alan v. Bussell, 558 P.2d 496, 499-500 (Alaska 1976); Mallonee v. Grow 502 P.2d 432 (Alaska 1972).

ment is not grounds for relief from the original judgment in the superior court. The appropriate remedy for such neglect is a request for permission to file an untimely appeal in this court.

The judgment of the superior court is accordingly AFFIRMED.

THE SUPREME COURT OF THE STATE OF ALASKA

RICHARD LAFFERTY,

Appellant,

v

ALYESKA PIPELINE SERVICE COMPANY, et al.,

Appellees.

Superior Court No. 3AN 77-3180 Civil

Supreme Court No. 7055

ORDER

(of September 15, 1983)

Before: Burke, Chief Justice, Rabinowitz, Matthews, Compton, Justices, and Hanson, Superior Court Judge. (Moore, Justice, not participating).

On consideration of the petition for rehearing lodged August 22,1983 and filed with leave of court on September 8, 1983,

It is ORDERED:

The petition for rehearing is denied.

Entered by direction of the court at Anchorage, Alaska on September 15, 1983.

CLERK OF THE SUPREME COURT
ROBERT D. BACON

(Rabinowitz, Justice, dissents. He would grant the petition for rehearing).

ccs: Justices, Counsel, The Honorable Victor D. Carlson, Appeals Deputy. Anchorage Trial Courts.

28 U.S.C.A. 1651 Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction. June 25, 1948, c. 646,62 Stat. 944; May 24, 1949, c. 139, sec. 90, 63 Stat. 102.

Applicable provision given in revisor's notes to 1651:

"The Supreme Court shall have power to issue writs...of mandamus, in cases warranted by the principles and usuages of law, to any courts appointed under the authority of the United States, or

to persons holding office under the authority of the United States, where a State, or an ambassador, or other public minister, or a consul, or vice consul is a party."

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

Article IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of common law.

Article VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

CONSTITUTION OF THE STATE OF ALASKA

Article 1, Section 7. Due Process. No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons

to fair and just treatment in the course of legislative and executive investigations shall not be infringed.

Article 1, Section 12. Excessive Punishment. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Penal administration shall be based on the principle of reformation and upon the need for protecting the public.

Article 1, Section 14. Searches and Seizures. The right of the people to be secure in their persons, houses and other property, papers and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause, supported by oath or affirmation, and

particularly describing the place to be searched, and the persons or things to be seized.

Article 1, Section 16. Civil Suits; Trial by Jury. In civil cases where the amount in controversy exceeds two hundred fifty dollars, the right of trial by a jury of twelve is preserved to the same extent as it existed at common law. The legislature may make provision for a verdict by not less than three-fourths of the jury and, in courts not of record, may provide for a jury of not less than six or more than twelve.

Rule 38. Jury Trial.

(a) Right Preserved. The right of trial by jury as declared by section 16 of article 1 of the constitution, or as given by a statue of the state, shall be preserved to the parties inviolate.

(b) Demand.Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand shall be made in a separate written document signed by the party making the demand or by his attorney.

(c) Demand-Specification of Issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties. (Amended by Supreme Court Order 465 effective June 1, 1981)

Rule 39. Trial by Jury or by the Court.

(a) By Jury. When trial by jury has been demanded as provided in Rule 38, the trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court, consent to trial by the court sitting without a jury or (2) the court upon motion by a party or upon its own motion finds that a right of trial by jury of some or all of those issues does not exist under the state constitution or statutes of the state.

(b) By the Court. Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but notwithstanding the failure of a party to de-

mand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) Advisory Jury and Trial by Consent. In all actions not triable of right by a jury the court upon motion by a party or upon its own motion may try an issue with an advisory jury or, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right. (Amended by Supreme Court Order 554 effective April 4, 1983)

Rule 56. Summary Judgment.

(a) For Claimant. A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim or cross-claim is asserted or a declaratory judgment is sought may, at any time, move for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be made pursuant to Rule 77, and may be supported by affidavits setting forth concise statements of material facts made upon personal knowledge. There must also be served and filed with each motion a memorandum showing that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The adverse party in accordance with Rule 77 may serve opposing affidavits, a concise "statement of genuine issues" setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated, and any other memorandum in opposition to the motion. Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file,

together with the affidavits, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. Summary judgment, when appropriate, may be rendered against the moving party.

(d) Case Not fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicalbe ascertain what material facts

exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits - Further Testimony - Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the

matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. When a motion for summary judgment is made and supported as provided in this rule, and adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of

a party opposing the motion that he can not for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule or presented in bad faith are solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reason-

able attorney's fees, and any offending party or attorney may be adjudged guilty of contempt. (Amended by Supreme Court Order 258 effective November 15, 1976)

Rule 60. Relief From Judgment or Order.

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal or petition for review to the supreme court, such mistakes may be so corrected before the record is filed in the supreme court,

and thereafter may be so corrected with leave of the supreme court.

(b) Mistakes - Inadvertence - Excusable Neglect - Newly Discovered Evidence - Fraud - Etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

(6) any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time, and for reasons (1)(2) and (3) not more than one year after the date of notice of the judgment or orders as defined in Civil Rule 58.1(c). A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to grant relief to a defendant

not personally served, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis and audita querela are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action. (Amended by Supreme Court Order 554 effective April 4, 1983)